

1 Carole Vigne, State Bar No. 251829  
2 Mana Barari, State Bar No. 275328  
3 Katherine Fiester, State Bar No. 301316  
4 **LEGAL AID AT WORK**  
5 180 Montgomery Street, Suite 600  
6 San Francisco, CA 94104  
7 Telephone: (415) 864-8848  
8 Facsimile: (415) 593-0096  
9 Emails: cvigne@legalaidatwork.org  
10 mbarari@legalaidatwork.org  
11 kfiester@legalaidatwork.org

12 *Attorneys for Plaintiff and the Settlement Class*

13 HARRY M. DECOURCY, Bar No. 230513  
14 MICHAEL W. NELSON, Bar No. 287213  
15 LITTLER MENDELSON, P.C.

16 Treat Towers  
17 1255 Treat Boulevard, Suite 600  
18 Walnut Creek, CA 94597  
19 Telephone: 925.932.2468  
20 Fax No.: 925.946.9809  
21 Emails: hdecourcy@littler.com  
22 mwnelson@littler.com

23 *Attorneys for Defendants*  
24 GORDO TAQUERIA #1, et al.

25 SUPERIOR COURT OF CALIFORNIA  
26 COUNTY OF ALAMEDA

27 JOSE MARTINEZ, on behalf of himself  
28 and all others similarly situated,

29 Plaintiff,

30 v.  
31 GORDO TAQUERIA #1, INC., a  
32 California Corporation dba Gordo  
33 Taqueria; GORDO TAQUERIA #2, INC.,  
34 a California Corporation dba Gordo  
35 Taqueria; GORDO TAQUERIA #3, INC. a  
36 California Corporation dba Gordo  
37 Taqueria; GORDO TAQUERIA #5, INC. a  
38 California Corporation dba Gordo  
39 Taqueria; GORDO TAQUERIA #6, INC. a  
40 California Corporation dba Gordo  
41 Taqueria; DICK YAMAGAMI, an  
42 individual dba Gordo Taqueria; MANUEL  
43 HERNANDEZ, an individual dba Gordo  
44 Taqueria; and DOES 1-10, inclusive,

45 Defendants.

46 Case No. RG16842777

47 ASSIGNED FOR ALL PURPOSES TO:  
48 JUDGE BRAD SELIGMAN, DEPT. 30

49 **JOINT STIPULATION FOR CLASS  
50 ACTION SETTLEMENT AND RELEASE**

51 Second Amended Complaint Filed:  
52 December 18, 2017

## **SETTLEMENT AGREEMENT**

This Joint Stipulation of Class Action Settlement and Release (the “Settlement”) is made by and between Plaintiff Jose Martinez (“Martinez” or “Plaintiff”) and Defendants Gordo Taqueria #1, Inc., a California Corporation dba Gordo Taqueria; Gordo Taqueria #2, Inc., a California Corporation dba Gordo Taqueria; Gordo Taqueria #3, Inc., a California Corporation dba Gordo Taqueria; Gordo Taqueria #5, Inc., a California Corporation dba Gordo Taqueria; Gordo Taqueria #6, Inc., a California Corporation dba Gordo Taqueria; Gordo Taqueria #7, Inc., a California Corporation dba Gordo Taqueria; Dick Yamagami, an individual dba Gordo Taqueria; and Manuel Hernandez, an individual dba Gordo Taqueria (“Defendants”).

## A. NATURE OF THE CASE AND THE PARTIES' SETTLEMENT

1. The Parties and Class Counsel. Plaintiff and Defendants are collectively referred to herein as “the Parties.” “Class Counsel” refers to the attorneys at Legal Aid at Work.

2. The Action. On December 16, 2016, Plaintiff, a former employee of Defendants, filed this putative class action in Alameda County Superior Court against Defendants, currently pending as Case No. RG16842777 (the “Action”). Plaintiff filed a First Amended Complaint on January 27, 2017. The Court granted Plaintiff leave to file a Second Amended Complaint (“SAC”) on December 18, 2017. The SAC will be filed contemporaneously with the motion for preliminary approval of class action settlement and is treated as the operative complaint for purposes of this Settlement. The Action purports to state nine causes of action: (1) violations of the Private Attorney General Act of 2004 (“PAGA”) (Labor Code §§ 2698 *et seq.*); (2) violations of the Unfair Competition Law (Business and Professions Code §§ 17200 *et seq.*); (3) conversion; (4) failure to pay overtime compensation (Labor Code §§ 510, 558.1, 1194, Wage Order 5); (5) failure to provide off duty meal periods (Labor Code §§ 226.7, 512, 558.1, Wage Order 5); (6) failure to authorize and permit rest periods (Labor Code §§ 218.5, 226.7, 558.1 and Wage Order 5); (7) waiting time penalties (Labor Code §§ 201, 202, 203, 558.1); (8) failure to provide accurate wage statements (Labor Code §§ 226, 226.3, 558.1); and (9) failure to maintain accurate payroll records (Labor Code §§ 1174, 1174.5, Wage Order 5).

3. The Class. The Class Members shall be defined as follows: all non-exempt

1 hourly employees, including prep cooks, line cooks, burrito-makers, dishwashers, and managers,  
2 who are currently employed or were formerly employed by Defendants in California at any time  
3 during the Class Period (as defined below).

4       4.       Class Period. For purposes of this Settlement, the proposed “Class Period”  
5 shall mean December 16, 2012 through September 24, 2017.

6       5.       Release Period. For purposes of this Settlement, the proposed “Release  
7 Period” shall mean December 16, 2012 through the date of preliminary approval of the Settlement  
8 by the Court.

9       6.       Investigation. The Parties conducted significant investigation of the facts and  
10 law applicable to the Action, including, *inter alia*, exchange of data, documents and information  
11 regarding the claims, extensive review and analysis of documents including Defendants’ tip records,  
12 payroll records, and timekeeping records, interviews of potential witnesses and Class Members,  
13 depositions of Plaintiff and Defendants’ Person Most Knowledgeable, data and damages analyses,  
14 meetings and conferences between counsel for the Parties before, during and after mediation, and  
15 have diligently pursued investigation of claims alleged against Defendants. Counsel for the Parties  
16 have further investigated the applicable law as applied to Plaintiff’s claims, the defenses thereto, and  
17 the damages and penalties claimed by Plaintiff in the Action, prior to the mediation and negotiating  
18 the Settlement. Based on their own independent investigation and evaluation, the Parties believe that  
19 the Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all  
20 known facts and circumstances, including the risks of significant delay, denial of a motion for class  
21 certification, decertification, defenses asserted, and potential appellate issues.

22       7.       The Mediation. On September 28, 2017, the Parties attended and participated  
23 in good faith, arm’s length settlement discussions at a mediation session with Martin Dodd, Esq., an  
24 experienced mediator and practicing employment litigator with approximately 35 years’ experience.  
25 A tentative settlement was reached at mediation, followed by several months of continued  
26 negotiations and analysis of the representations made by Defendants at mediation, after which the  
27 Parties agreed to settlement terms memorialized by this Settlement. This Settlement was reached  
28 after substantial exchanges of data, information and documents before, during, and ongoing after the

1 mediation, and is a result of extensive arms-length negotiations. The Parties believe and agree that  
2 this Settlement is a fair, adequate, and reasonable resolution of the Action, taking into account all  
3 relevant factors, present and potential, and will so represent it to the Court.

4       8.     No Admissions and Denial of Wrongdoing. This Agreement is made for the  
5 sole purpose of consummating the settlement of all claims alleged in the Action. By entering into  
6 this Agreement, none of the Parties admit the allegations or contentions of any other Party, and each  
7 Party is entering into this Agreement for the sole purpose of resolving this matter and avoiding the  
8 time and expense incident to protracted litigation. Nothing herein shall be deemed to waive any of  
9 Defendants' objections or defenses to class certification or any other issue relating to or arising from  
10 the allegations set forth in the Action. Defendants deny that, for any purpose other than settlement,  
11 the Action is appropriate for class or representative treatment.

12       9.     Cooperation. The Parties and their counsel agree to cooperate with each other  
13 and to use their best efforts to effect the implementation of this Settlement pursuant to its terms.

14 **B.     TERMS OF SETTLEMENT**

15       1.     Purpose of the Parties. The Parties agree that the Action be settled on the  
16 terms described herein as between Plaintiff and the Class Members (except for those who timely and  
17 validly opt out as provided below) and Defendants, subject to the approval of the Court.

18       2.     Stipulation for Conditional Certification of the Class. Solely for purposes of  
19 consummation and fulfillment of this Settlement, the Parties each agree to the conditional  
20 certification of the Class. However, if, for whatever reason, the Settlement does not become final,  
21 the Parties' stipulation to conditional class certification shall become null and void *ab initio* and this  
22 Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of  
23 whether or not certification would be appropriate in the Action or in any non-settlement context. The  
24 Parties each agree the terms of the Settlement are conditioned on payment of all amounts required to  
25 the extent approved by the Court and to be paid by Defendants under the terms of this Settlement.

26       3.     Application for Preliminary Approval. Counsel for the Parties shall jointly  
27 request a hearing before the Court to seek preliminary approval of the Settlement on the earliest  
28 practical date. In conjunction with such Preliminary Approval hearing, the Parties will provide the

1 Court with the Settlement, and any other documents necessary to implement the Settlement.  
2 Simultaneously with the filing of this Stipulation for Settlement, and solely for purposes of  
3 Settlement, Counsel for the Parties will request that the Court enter a Preliminary Approval Order,  
4 preliminarily approving the proposed Settlement, conditionally certifying the Class and approving  
5 the Class and Release Periods for settlement purposes only, appointing Legal Aid at Work as Class  
6 Counsel, approving Plaintiff Martinez as class representative, approving appointment of the  
7 Settlement Administrator, and setting a date for a Final Approval Hearing. The Preliminary  
8 Approval Order shall also provide for notice of the Settlement and related matters to be disseminated  
9 to Class Members as specified herein or as may otherwise be ordered by the Court, provided that  
10 such order is also acceptable to the Parties and consistent with the terms of this Settlement.

11       4.     Effective Date. The “Effective Date” of the Settlement shall be when final  
12 approval of the Settlement can no longer be appealed by an objector in the event of an objection, or  
13 in the absence of any objections, five (5) calendar days after entry of the order granting final  
14 approval. If objections are heard by the Court and overruled, and no appeal is taken of the final  
15 approval order, then the Effective Date will be fifteen (15) calendar days after entry of the order  
16 granting final approval. If any appeal is taken from the Court’s overruling of any objections to the  
17 Settlement, then the Effective Date will be ten (10) calendar days after all appeals are withdrawn or  
18 after an appellate decision affirming the final approval order becomes final. However, Defendants  
19 shall not be required to fund any portion of the Gross Settlement Fund and the Settlement  
20 Administrator (terms defined below) shall not distribute or pay any monies, unless and until all such  
21 appeals or Class Member objections have been finally resolved or dismissed with prejudice.

22       5.     Gross Settlement Fund. Provided this Settlement is finally approved by the  
23 Court, and in consideration for the release of all claims (as described more fully in Section E,  
24 below), Defendants agree to pay Six Hundred and Ninety Thousand Dollars and No Cents  
25 (\$690,000.00) (the “Gross Settlement Fund”), as a full and complete settlement of all claims arising  
26 from the Action. Except as set forth herein, the Gross Settlement Fund is the total maximum amount  
27 Defendants shall be required to pay under this Settlement for all purposes, including, as approved by  
28 the Court, the Individual Settlement Payments, Administration Costs, Litigation Costs, Attorneys’

1 Fees, Class Representative Service Award, and PAGA Payment (terms defined below). Defendants  
2 will be separately responsible for any employer payroll taxes required by law (defined in Paragraph  
3 B.16 below), including the employer FICA, FUTA, and SDI contributions, which shall not be paid  
4 from the Gross Settlement Fund. The Gross Settlement Fund is all-inclusive and under no  
5 circumstances will Defendants be required to pay more than the Gross Settlement Fund (other than  
6 employer payroll taxes). There will be no reversion of the Gross Settlement Fund to Defendants.

7         6.         Net Settlement Fund. The Net Settlement Fund is the portion of the Gross  
8 Settlement Fund which shall be distributed to the Class, after deductions are made from the Gross  
9 Settlement Fund for the Individual Settlement Payments, Administration Costs, Litigation Costs,  
10 Attorneys' Fees, Class Representative Service Award, and PAGA Payment (terms defined below),  
11 as approved by the Court

12         7.         Individual Settlement Payments. Each Participating Class Member will be  
13 entitled to a *pro rata* distribution from the Net Settlement Fund as set forth herein. "Participating  
14 Class Members" shall mean all Class Members except those who validly exclude themselves from  
15 the settlement, and those whose Class Notices are returned as undeliverable. "Individual Settlement  
16 Payment" shall mean the total gross amount (subject to applicable employee payroll taxes and  
17 withholdings) each Participating Class Member is entitled to receive from the Net Settlement Fund  
18 calculated pursuant to the formula below. Only Participating Class Members are eligible to receive  
19 Individual Settlement Payments. Any Class Members who do not exclude themselves from the  
20 Settlement in accordance with the requirements set forth in the Notice (**Exhibit A**), and whose  
21 Notice is not returned as undeliverable, shall be deemed Participating Class Members and shall be  
22 bound by this Settlement and any order or judgment entered by the Court approving this Settlement.  
23 Class Members who submit timely written requests for exclusion pursuant to the Notice, or whose  
24 Notices are returned as undeliverable, are not Participating Class Members, and therefore are not  
25 entitled to any Individual Settlement Payment and will not be bound by this Settlement or any order  
26 or judgment entered by the Court approving this Settlement.

27         8.         Calculation of Individual Settlement Payments. Individual Settlement  
28 Payments will be calculated and apportioned from the Net Settlement Amount based on the

1 approximate total number of hours worked by each Class Member and last hourly rate of pay during  
2 the Class Period, based on Defendants' records. The Settlement Administrator shall determine each  
3 Class Member's final *pro rata* portion of the Net Settlement Fund as follows:

- 4 a. First, the Settlement Administrator shall calculate each Class Member's weighted work-  
5 hours value as follows: (1) multiplying the sum of total hours worked from the beginning  
6 of the Class Period through February 1, 2015 (hereinafter the "Regular Pay Period") by .5  
7 to create an "Regular Pay Period Premium," in order to further compensate Class  
8 Members who worked during the time period during which Plaintiff alleges that all work  
9 hours were paid at regular pay rates; (2) adding the sum of the Regular Pay Period  
10 Premium to the total number of hours worked during the Class Period to determine the  
11 total weighted work-hours per Class Member; and (3) multiplying the Class Member's  
12 last known hourly rate and total weighted work-hours for each Class Member.
- 13 b. Second, to compensate separated Class Members for any waiting time penalties under  
14 Labor Code § 203, the Settlement Administrator will apply a 1.1 multiplier to each Class  
15 Member's total (from (a)(3) above), for those Class Members who have separated from  
16 their employment during the Class Period. The Settlement Administrator shall determine  
17 the separated Class Members according to Defendants' records of separated Class  
18 Members. This determination may be subject to challenge, as described below. This  
19 resulting amount will be the Class Member's *pro rata* Settlement Share Rate.
- 20 c. Third, the total Settlement Share Rates for all Class Members, will be aggregated.
- 21 d. Fourth, the Settlement Administrator will divide the Net Settlement Fund by the  
22 aggregate Settlement Share Rates of all Class Members. The resulting payout amount  
23 will then be multiplied by the individual Class Member's Settlement Share Rate to  
24 determine that Class Member's estimated share of the Net Settlement Fund. Should the  
25 *pro rata* share be less than \$50.00, the estimated share of the Class Member shall be  
26 \$50.00. This amount shall constitute the Class Member's Final Estimated Settlement  
27 Share of the Net Settlement and shall be included in the Settlement Share Form sent to  
28 each Class Member as part of the Notice.

- e. Fifth, the Settlement Administrator shall consider and finally resolve any challenges to the information used to calculate the estimated or final amounts due to any eligible Class Member who makes such a challenge according to Section D.4 below.
- f. Sixth, after resolving any challenges and excluding the hours worked of any Class Member(s) who timely and validly request exclusion from the Settlement, or whose Notices are returned as undeliverable, the Settlement Administrator shall determine each eligible Participating Class Member’s “Individual Payment Amount” (his/her final *pro rata* portion of the Net Settlement Fund) by repeating the steps above using the values resulting from the challenge process.
- g. Seventh, the Settlement Administrator will pay to each Participating Class Member his or her Individual Payment Amount, and shall cut and mail checks to Class Members after the Effective Date without the necessity of a formal claim being filed.
- h. Each Participating Class Member shall also receive his or her *pro rata* share of the portion of the PAGA Payment, which is payable under the same *pro rata* formula described in subsections (a) through (d) above.

The Parties recognize and agree that the precise amounts of compensation owed in this Action are extremely difficult to determine with any certainty for any given year, if at all, and may be subject to different calculations and formulas. The Parties agree that the formula for allocating the Individual Settlement Payments to Participating Class Members provided herein is reasonable and that the payments provided herein are designed to provide a fair settlement to such persons, in light of the uncertainties regarding the calculation of alleged compensation to each Participating Class Member.

9. Deposit of Settlement Funds. Defendants shall deposit, in an account created by the Settlement Administrator for disbursement as set forth below, the Gross Settlement Fund as follows: within five (5) calendar days following the Effective Date, the Settlement Administrator shall provide Defendants routing instructions to wire transfer funds for deposit. Within fifteen (15) calendar days following the Effective Date, Defendants shall deposit the Gross Settlement Fund into the account.

1                   10.     Litigation Costs. Class Counsel will apply to the Court for payment of Class  
2 Counsel's expenses from the Gross Settlement Fund, in an amount according to proof, but not to  
3 exceed Ten Thousand Dollars and No Cents (\$10,000.00) (the "Litigation Costs"). The Litigation  
4 Costs may include, but is not limited to, any costs and expenses incurred by Plaintiff in the  
5 prosecution of this Action, including filing fees, as approved by the Court. If the Court approves less  
6 than the amount requested by Class Counsel, the remainder shall be included in the Net Settlement  
7 Fund and available for distribution to Participating Class Members. Defendants will not object to or  
8 oppose Class Counsel's request for the Litigation Costs as set forth herein.

9                   11.     Attorneys' Fees. Class Counsel will apply to the Court for payment of  
10 attorneys' fees from the Gross Settlement Fund in an amount not to exceed twenty-five percent  
11 (25%) of what remains of the Gross Settlement Fund (the "Attorneys' Fees") after Litigation Costs  
12 have been deducted. If the Court approves less than the amount requested by Class Counsel, the  
13 remainder shall be included in the Net Settlement Fund and available for distribution to Participating  
14 Class Members. Defendants will not object to or oppose Class Counsel's request for Attorneys' Fees  
15 as set forth herein.

16                   12.     Class Representative Service Award. Class Counsel will apply to the Court for  
17 payment of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff from the Gross Settlement Fund as  
18 consideration for his service to the Class as a Class Representative and his entry into the general  
19 release of all claims as set forth herein (the "Service Award"). This amount shall be paid in addition  
20 to Plaintiff's Individual Settlement Payment. If the Court approves less than the amount requested by  
21 Class Counsel as a Service Award, the remainder shall be included in the Net Settlement Fund and  
22 available for distribution to Participating Class Members. Defendants will not object to or oppose  
23 Class Counsel's request for the Service Award as set forth herein.

24                   13.     Settlement Administration Costs. The reasonable costs of settlement  
25 administration through and beyond final approval, estimated not to exceed Ten Thousand Dollars  
26 (\$10,000.00) if there is one distribution, and Twelve Thousand Dollars (\$12,000.00) if there are two  
27 distributions (the "Administration Costs"), shall be paid from the Gross Settlement Fund. If the  
28 Administration Costs approved by the Court are less than the requested amount, the remainder shall

1 be included in the Net Settlement Fund and available for distribution to Participating Class  
2 Members. If actual Administration Costs exceed the above estimate, then any such additional fees  
3 and costs may be paid from the Gross Settlement Fund only as approved by the Court.

4       14. PAGA Payment. The total sum of Ten Thousand Dollars (\$10,000.00) from  
5 the Gross Settlement Fund is allocated to settle claims brought pursuant to the Private Attorneys  
6 General Act, California Labor Code § 2698, *et seq.*, as approved by the Court, which shall be  
7 distributed by the Settlement Administrator to the California Labor and Workforce Development  
8 Agency (“LWDA”) and Participating Class Members as set forth herein (the “PAGA Payment”). Of  
9 this amount, seventy-five percent (75%) shall be distributed to the LWDA. The remaining twenty-  
10 five percent (25%) shall be allocated to the Class and paid *pro rata* to Participating Class Members  
11 based on the formula in Paragraph B.8 set forth above. Because the PAGA Payment is in the nature  
12 of a statutory penalty pursuant to Labor Code section 2699(i), these payments shall not be subject to  
13 withholding.

14       15. Allocation of Wages, Interest, and Penalties. The Parties agree that for the  
15 first distribution, thirty percent (30%) of each Individual Settlement Payment is allocated to wages,  
16 subject to all applicable wage laws, including federal, state and local tax withholding and payroll  
17 taxes, reported on IRS Form W-2. The remaining portion of each Individual Settlement Payment  
18 shall be allocated as follows: thirty-five percent (35%) represents interest, and thirty-five percent  
19 (35%) represents penalties and other non-wage damages sought in the Action. Payments allocated to  
20 penalties, non-wage damages and interest shall not be subject to withholding, and will be reported on  
21 IRS Forms 1099 as needed. The Settlement Administrator shall be responsible for issuing all  
22 payments and calculating and withholding any required federal, state and local taxes. If there is a  
23 second distribution, one hundred percent (100%) of such distribution represents non-wage damages.

24       16. Taxes. All payroll taxes will be computed by the Settlement Administrator  
25 based on the amounts actually paid to Participating Class Members allocated to wages, as set forth in  
26 Paragraph B.15 above. “Employer Taxes” shall mean Defendants’ share of applicable payroll taxes,  
27 such as FICA and FUTA, for that portion of the Individual Settlement Payments attributed to wages.  
28 “Employee Taxes” shall mean Participating Class Members’ share of all applicable payroll taxes and

1 withholdings. The Settlement Administrator shall timely and properly withhold from the payments  
2 representing wages all applicable Employee Taxes. Payments to Participating Class Members and  
3 Plaintiff pursuant to this Settlement shall be reported by the Settlement Administrator on IRS Forms  
4 W-2 (for payments representing wages) or 1099 (for all other payments), and provided to the  
5 respective Participating Class Members and governmental authorities as required by law. The  
6 Settlement Administrator shall issue all reports required by federal, state, and local tax agencies to  
7 document all payments made pursuant to this Settlement. Notwithstanding the withholding of  
8 Employee Taxes, each Participating Class Member shall be responsible for paying all applicable  
9 state, local, and federal income taxes, interest or penalties arising from any payment received  
10 pursuant to this Settlement. Should any taxing authority or agency challenge the allocation of  
11 Individual Settlement Payments and/or Employee Taxes, Participating Class Members shall provide  
12 documentation as requested to demonstrate such payment and the appropriateness of any  
13 withholding. Neither Class Counsel nor Defendants' Counsel intend anything contained herein  
14 (including the Notice Packet) to constitute legal advice regarding the taxability of any amount paid  
15 hereunder, nor shall it be relied upon as such. The tax issues for each Participating Class Member are  
16 unique, and each Participating Class Member is advised to obtain tax advice from his or her own tax  
17 advisor with respect to any payments resulting from the Individual Settlement Payments.

18       17. No Effect on Employee Benefits. The Individual Settlement Payments  
19 available to Participating Class Members and the Service Award paid to Plaintiff shall not have any  
20 effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay,  
21 leave or illness policies, retirement plans, etc.) of Plaintiff or Participating Class Members. Further,  
22 any Individual Settlement Payment or the Service Award paid hereunder shall not be considered  
23 "compensation" in any year for purposes of determining eligibility for employee bonuses, or  
24 employee past, current, or future compensation levels. The Parties further agree that Plaintiff and all  
25 Participating Class Members will be deemed to have waived any claims or benefits under the  
26 Employee Retirement Income Security Act of 1974 (29 U.S.C § 1001, *et seq.*) premised upon any  
27 and all amounts they receive under this Settlement as part of their Released Claims under this  
28 Settlement.

18. Distribution of Settlement Funds. Following the Effective Date, the Settlement Administrator shall distribute the payments provided by this Settlement as follows: Within fifteen (15) calendar days following the Deposit of Settlement Funds (as set forth in Paragraph B.9), the Settlement Administrator shall distribute, as approved by the Court, the PAGA Payment, the Individual Settlement Payments, the Service Award, the Attorney's Fees and Litigation Costs, and the Administration Costs. The Settlement Administrator shall also promptly notify Defendants of the calculated amount necessary to satisfy payment of the Employer Taxes and provide wire instructions within five (5) calendar days of the Effective Date for deposit of same.

19. Distribution of Cash Residues and *Cy Pres*. Any check issued to any Participating Class Member shall remain valid and negotiable for ninety (90) calendar days from the date of its issuance, but if not cashed within that time will be deemed null and void and of no further force and effect. In the event there are any such unclaimed or abandoned funds intended for Participating Class Members, or other unpaid cash residues from the Gross Settlement Fund, including any accrued interest, that has not otherwise been distributed pursuant to order of the Court (“the Residues”), the Residues will be distributed as follows:

a. Second Distribution to Class Members. If the Residues are \$10,000 or greater, the Settlement Administrator will distribute the Residues on a *pro rata* basis to the Participating Class Members who cashed their settlement check in the same manner described above in Paragraph B.8. Such distribution will occur within thirty (30) calendar days following the expiration of Participating Class Members' Individual Settlement Payment checks.

- i. If a Class Member who either did not receive the Class Notice, or who did not receive or cash his/her check after the First Distribution, appears after the First Distribution, but before this Second Distribution, then the Settlement Administrator shall pay out his/her share before this Second Distribution occurs. This payment shall be calculated to approximate as best possible and as funds permit what the Class Member should

1 have received had his/her information been included in the  
2 settlement share calculations discussed above. Any remaining  
3 Residues will then be part of a Second Distribution, paid  
4 proportionally among Class Members who cashed their  
5 Settlement Checks or who are receiving payment under this  
6 section.

7 ii. If a Class Member who either did not receive the Class Notice,  
8 or who did not receive or cash his/her check after the First and  
9 Second Distributions, appears after the Second Distribution,  
10 and funds still remain, then the Settlement Administrator shall  
11 pay to the Participating Class Member a share calculated to  
12 approximate as best as possible what the Class Member should  
13 have received had his/her information been included in the  
14 settlement share calculations discussed above and as funds  
15 permit.

16 iii. If more than one Class Member appears after the First or  
17 Second Distribution, and funds still remain, then the Settlement  
18 Administrator shall pay out the remaining funds on a *pro rata*  
19 basis in relation to each other.

20 iv. For any Second Distribution that takes place, the Parties agree  
21 that the Second Distribution be allocated as miscellaneous  
22 income, not subject to withholding, and will be reported in IRS  
23 Forms 1099 as needed.

24 b. *Cy Pres.* If the Residues are less than \$10,000, the Settlement Administrator will  
25 distribute the remaining funds as follows, pursuant to Code of Civil Procedure section  
26 384:

27 i. Fifty (50%) of the Residues distributed on a *cy pres* basis to  
28 **Catholic Charities;** and

ii. Fifty (50%) of the Residues distributed on a *cy pres* basis to

## Young Workers United.

c. The Settlement Administrator shall, after distributing the Residues, provide the Parties a report: i) itemizing all of the Residues; and ii) the amounts of the Residues distributed to the Participating Class Members or *cy pres* recipients and the date(s) of distribution.

7                   20. Claims Against Administrator. No person shall have any claim against the  
8 Parties, the Parties' Counsel, or the Settlement Administrator based on mailings, distributions, and  
9 payments made in accordance with this Settlement or any order of the Court. The Settlement  
10 Administrator is not and shall not be deemed to be an employee or agent of any Party.

## **C. SETTLEMENT ADMINISTRATION**

12                   1.        Appointment of Third Party Administrator. The Parties have agreed to petition  
13 the Court for appointment of Dahl Administration, LLC to administer the settlement of the Action  
14 under the terms of this Settlement (the “Settlement Administrator”). The Settlement Administrator  
15 shall be responsible for:

22 (c) Keeping track of timely and valid Requests for Exclusion, disputes of Class  
23 Member information, and objections;

24 || (d) Resolving Class Member disputes;

25 (e) Calculation of Individual Settlement Payments and PAGA Payments to each  
26 Participating Class Member and the LWDA;

27 (f) Providing weekly status reports to counsel for the Parties, including: (i) the  
28 number of Notice Packets mailed; (ii) the number of objections received, if any; (iii) the number of

1 requests for exclusion received, if any; (iv) the number of challenges received, if any; and (v) the  
2 aggregate amount of Individual Settlement Payments claimed by Participating Class Members;

3 (g) No later than five (5) business days before the Final Approval Hearing  
4 preparing and serving on counsel for the Parties, for filing with the Court in support of Plaintiff's  
5 Motion for Final Approval, a declaration of due diligence setting forth its compliance with its  
6 obligations under this Settlement, with regard to (i) the mailing of the Class Notice, (ii) attempts to  
7 locate Class Members, and (iii) the number of Class Members whose Notice Packets were returned  
8 as undeliverable after all attempts to locate a correct address;

9 (h) Notifying Counsel for Defendants within five (5) calendar days after the  
10 Effective Date regarding the calculated amount necessary to satisfy payment of the Employer Taxes  
11 and providing wiring instructions for the Deposit of Settlement Funds as approved by the Court,  
12 which shall be paid by Defendants to the Settlement Administrator within fifteen (15) calendar days  
13 after the Effective Date;

14 (i) Distributing and reporting the Individual Settlement Payments, PAGA  
15 Payment, Service Award, Litigation Costs, Attorneys' Fees, Administration Costs, and Employer  
16 Taxes, as may be ordered by the Court or as otherwise necessary;

17 (j) Issuing an IRS Form W-2 to each Participating Class Member for the wage  
18 portion of each Individual Settlement Payment, an IRS Form 1099 as needed to each Participating  
19 Class Member for the interest, penalties, and non-wage portion of each Individual Settlement  
20 Payment, including PAGA Payments, an IRS Form 1099-MISC to Plaintiff for the Service Award,  
21 an IRS Form 1099-MISC to Class Counsel for the Attorneys' Fees and Litigation Costs, and an IRS  
22 Form 1099-MISC to the Settlement Administrator for the Administration Costs;

23 (k) Providing the Parties with a report itemizing the distribution of any  
24 Secondary Distribution and Residues; and,

25 (l) Such other tasks as the Parties mutually agree or the Court orders the  
26 Settlement Administrator to perform, including responding to questions from Class Members.

27 2. Resolution of Disputes. All disputes relating to the Settlement Administrator's  
28 duties may be referred to the Court, if necessary, which will have continuing jurisdiction over this

1 Settlement until all obligations contemplated by this Settlement have been fully carried out.

2 **D. NOTICE TO THE CLASS**

3       1. Class List. Within ten (10) calendar days following the date of entry of an  
4 order granting preliminary approval of the Settlement, Defendants will provide the Settlement  
5 Administrator with the following information, to the extent known by Defendants: the full name,  
6 most recent known mailing address, telephone number, social security number, dates of  
7 employment, total hours worked during the Class Period, total hours worked during the Regular Pay  
8 Period, and last rate of pay for each Class Member (collectively the “Class List”). Each Class  
9 Member’s total hours worked will be derived from Defendants’ records. The Class List will be  
10 treated as confidential by the Settlement Administrator and will not be disclosed by the Settlement  
11 Administrator to anyone, except as may be required to applicable tax authorities, pursuant to the  
12 express written consent of Defendants, by order of the Court, or as may be necessary to carry out the  
13 reasonable steps described in this Settlement to locate missing Class Members. Defendants will also  
14 provide Class Counsel will the full name, dates of employment, total hours worked during the Class  
15 Period, total hours worked during the Regular Pay Period and last rate of pay for each Class Member  
16 during the Class Period, and Class Counsel agrees to maintain and treat such information as  
17 confidential.

18       2. Notice of Settlement. Within fifteen (15) calendar days after entry of an order  
19 granting preliminary approval of the Settlement, the Settlement Administrator shall mail a copy of  
20 the Notice Packet in the form approved by the Court in its preliminary approval order to all persons  
21 shown by Defendants’ records to be Class Members, *via* first class U.S. mail, using the most current  
22 mailing address available. The Class Notice shall be in English and Spanish and shall fairly inform  
23 the Class Members of the general nature of this action, the financial and other terms of this  
24 Agreement particularly significant to the Class Members, and the general procedures and deadlines  
25 for submitting a request to be excluded from the settlement and/or objecting to the settlement, in  
26 simple and easily understood language. The Class Notice shall be individualized, identifying the  
27 Class Member by name and current mailing address, acknowledging the total hours worked, total  
28 hours worked during the Regular Pay Period, and last known hourly rate during the Class Period,

1 describing the Class Member's employment status with Defendants, stating the total approximate  
2 amount each Class Member is estimated to be entitled to receive as their Individual Settlement  
3 Payment under the Settlement. Unless modified by the Court, the Notice Packet, including the Class  
4 Notice and the Settlement Share Form, shall read substantially as set forth in **Exhibit A** hereto.

5       3. Any Notice Packets returned to the Settlement Administrator as undelivered  
6 and bearing a forwarding address shall be re-mailed by the Settlement Administrator within three (3)  
7 business days following receipt of the returned mail. For any Notice Packets returned to the  
8 Settlement Administrator without a forwarding address, the Settlement Administrator shall first  
9 conduct a National Change of Address search as required for undeliverable Notice Packets, followed  
10 by a computer/SSN and "skip trace" search to obtain an updated address, and shall promptly re-mail  
11 the Notice Packets to any newly-found address or addresses. The re-mailed Notice Packet(s) shall be  
12 identical to the original Notice Packet. The time period to submit a Claim Form shall not be  
13 extended on account of a returned or undeliverable Notice Packet. The Settlement Administrator and  
14 counsel for Defendants shall undertake all reasonable efforts to locate and verify the addresses of  
15 Class Members and to send a Notice Packet to all Class Members, including reviewing undeliverable  
16 Notices to determine whether any belong to a currently employed Class Member. If the Notice is re-  
17 mailed, the Settlement Administrator will note for its own records and notify Parties of the date of  
18 each such re-mailing. Any costs incurred by having the Settlement Administrator handle these  
19 administrative tasks shall be included in the Administration Costs approved by the Court.

20       4. Class Member Disputes. If a Class Member disputes the total number of hours  
21 s/he is recorded to have worked, dates of employment, last hourly rate of pay, or separation status,  
22 the Class Member may produce evidence to the Settlement Administrator supporting their challenge.  
23 All challenges must be postmarked no later than sixty (60) calendar days after the date on which the  
24 Settlement Administrator mails the Class Notices. The Settlement Administrator may reject any  
25 challenge not supported by such evidence. If a dispute arises over the number of total hours worked  
26 listed in the Class Notice based on evidence produced by a Class Member, Defendants will be asked  
27 to manually review their tip, payroll, and personnel records to verify the information disputed. The  
28 Settlement Administrator's determination shall be final, binding, and non-appealable. The Court will

1 not review any such disputes.

2                   5. Procedure for Objecting or Requesting Exclusion. The Parties agree that  
3 Plaintiff may not opt out of the Settlement or file an objection to the Settlement, but that any other  
4 Class Member or person(s) purporting to act on behalf of Class Members who wishes to object to the  
5 Settlement, or to be excluded from the Settlement, must submit timely written objections and/or  
6 requests for exclusion using the following procedures:

7                   (a) The Class Notice shall provide that any Class Member(s) and person(s)  
8 purporting to act on behalf of any Class Member(s) who wish to object to the Settlement may  
9 submit a written statement objecting to the Settlement to the Settlement Administrator no later than  
10 sixty (60) calendar days after the date on which the Settlement Administrator mailed the Notice  
11 Packets. The Settlement Administrator will share all submitted objections with the Parties, and  
12 Class Counsel will file a single packet with all objections with the Court;

13                   (b) Notwithstanding, in the discretion of the Court, any Class Member, or person  
14 purporting to object on behalf of any Class Member, may be received or considered by the Court at  
15 the Final Approval Hearing, regardless of whether a written notice of objection is filed or delivered,  
16 as set forth above;

17                   (c) Absent good cause found by the court, a Class Member who fails to file and  
18 serve a written objection or appear at the Final Approval Hearing in the manner specified above  
19 shall be deemed to have waived any objections and shall be foreclosed from making any objection  
20 to the Settlement, whether by appeal or otherwise;

21                   (d) The Notice shall also provide that Class Members who wish to exclude  
22 themselves from the Settlement must submit to the Settlement Administrator a written statement  
23 requesting exclusion from the Settlement. Such written Request for Exclusion must be postmarked  
24 no later than sixty (60) calendar days after the date on which the Settlement Administrator mails the  
25 Notice Packets. The Settlement Administrator shall provide the Parties the names of individuals  
26 who make timely Requests for Exclusion;

27                   (e) Class Members who submit a timely Request for Exclusion will not receive a  
28 *pro rata* distribution from the Net Settlement Amount. No Request for Exclusion will be accepted

1 by the Settlement Administrator if postmarked later than sixty (60) calendar days after the date on  
2 which the Settlement Administrator mails the Notice Packets;

3 (f) Any Class Member who fails to submit a Request for Exclusion shall  
4 automatically be deemed a Class Member whose rights and claims with respect to the Released  
5 Claims (as defined below) are determined by the Court's Final Approval Order, and by the other  
6 rulings in the Action and said class member's rights to pursue any Released Claims will be  
7 extinguished;

8 (g) If a Class Member timely submits both a Request for Exclusion from the  
9 Settlement and an objection, the Class Member shall be deemed to have submitted only a valid  
10 objection, and the Request for Exclusion shall be deemed null and void;

11 6. Contact with Class Members. The Parties agree to use their best efforts to  
12 carry out the terms of this Settlement. Neither the Parties nor their counsel or agents will contact  
13 Class Members for the purpose of attempting to influence them to participate or not to participate in  
14 this Settlement. However, if contacted by a Class Member, Class Counsel may provide information  
15 or assistance regarding any aspect of the Settlement requested by the Class Member consistent with  
16 Class Counsel's fiduciary duties. At no time shall any of the Parties or their counsel, agents, or  
17 representatives solicit or otherwise encourage Class Members or any other persons (including but  
18 not limited to the LWDA) to submit written objections to the Settlement or Requests for Exclusion  
19 from the Settlement, or encourage Class Members or any other person to appeal from the Final  
20 Approval Order. Class Counsel will maintain a website that has links to the notice and the most  
21 important documents in the case, and the URL to such website will be provided in the Notice.

22 **E. RELEASES**

23 1. Release by the Settlement Class. As of the Effective Date, and for the duration  
24 of the Release Period, Plaintiff and all Participating Class Members (on behalf of each of them and  
25 each of their heirs, executors, administrators, and assigns) irrevocably and unconditionally fully  
26 release and forever discharge Defendants, and all of their past, present, and future parent companies,  
27 subsidiaries, affiliates, divisions, agents, and all of their respective past, present and future  
28 employees, members, officers, directors, shareholders, owners, agents, vendors, affiliates, partners,

1 legal representatives, accountants, trustees, executors, administrators, real or alleged alter egos,  
2 predecessors, successors (including persons or entities who may acquire it in the future), transferees,  
3 assigns, representatives, heirs, executors, administrators, insurers and all other persons acting by,  
4 through, under or in concert with them that could be liable (collectively the “Released Parties”),  
5 from all claims asserted in the Action and any and all claims, debts, rights, demands, obligations or  
6 liabilities of every nature and description, whether known or unknown, for damages, penalties,  
7 liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or  
8 equitable relief arising out of the allegations that were or could be asserted based on the facts alleged  
9 in the Action (the “Released Claims”). The Released Claims include, but are not limited to:

10 (a) any and all claims based on the alleged failure to timely and  
11 properly distribute tips; failure to pay overtime and/or double-time wages for all overtime hours  
12 worked; failure to pay all wages, including tips and overtime pay, due upon separation from  
13 employment; failure to provide a second 30-minute meal period on days in which more than 10  
14 hours are worked; failure to authorize and permit 10-minute rest periods; interference with the right  
15 to take sick days and failure to pay sick leave; failure to furnish accurate wage statements; and  
16 failure to maintain required payroll records pursuant to California Labor Code sections 201-203,  
17 226, 226.3, 226.7, 246, 248.5, 351, 353, 510, 512, 516, 558.1, 1174, and 1194, the applicable  
18 Industrial Welfare Commission Wage Orders, including 5-2001, and any related common law  
19 claims including conversion;

20 (b) any and all claims for civil and statutory penalties pursuant to  
21 the California Private Attorney General’s Act, California Labor Code section 2698, *et seq.* based  
22 upon the claims released herein; and

23 (c) any and all claims for unfair competition and/or unfair  
24 business practices pursuant to California Business and Professions Code § 17200 based upon the  
25 claims released herein; and,

26 (d) any applicable penalties, damages, interest, attorneys’ fees, or  
27 costs, including but not limited to fees and costs that could be awarded pursuant to California Labor  
28 Code sections 218.5, 218.6, 226, 1194, and 1021.5.

2. Additional General Release of All Claims by Plaintiff. As of the Effective Date, and for the duration of the Class Period, Plaintiff (on his own behalf and on behalf of his heirs, executors, administrators, and assigns) knowingly and voluntarily releases and forever discharges the Released Parties from any and all claims, known and unknown, asserted and unasserted, that he has or may have had against Defendants or any of the Released Parties. Such claims include, but are not limited to: breaches of contract, whether written, oral or implied; violations of any public policy; tort claims, including but not limited to intentional infliction of emotional distress and negligent infliction of emotional distress, defamation, misrepresentation, and fraud; retaliation claims; common law claims; any other claims for damages, costs, fees, or other expenses, including attorneys' fees; and any violations of the following statutes, laws, and regulations: Title VII of the Civil Rights Act of 1964, as amended; The Civil Rights Act of 1991; Sections 1981 through 1988 of Title 42 of the United States Code, as amended; The Americans with Disabilities Act of 1990, as amended; The Age Discrimination in Employment Act of 1967, as amended; the Older Workers Benefit Protection Act; the Employment Retirement Income Security Act of 1974, as amended; the Occupational Safety and Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Family and Medical Leave Act of 1993, as amended; the Fair Labor Standards Act; the California Fair Employment and Housing Act – Cal. Government Code § 12900, *et seq.*; the California Family Rights Act – Cal. Government. Code §12945.2, *et seq.*; the California Unruh Civil Rights Act – Civil Code § 51, *et seq.*; the California Whistleblower Protection Law – California Labor Code § 1102.5(a) to (c); the California Occupational Safety and Health Act, as amended, California Labor Code § 6300, *et seq.*, and any applicable regulations thereunder; the California Labor Code; the Private Attorneys General Act of 2004 – California Labor Code § 2698, *et seq.*; California Labor Code § 132a; and any other federal, state, or local civil employment law, statute, regulation, or ordinance capable of being released by Plaintiff, excluding any claims that cannot be released as a matter of law.

3. Defendants' Warranty to Plaintiff. Defendants warrant and represent that they have not engaged in any unfair immigration-related practices against Plaintiff, including but not limited to those practices enumerated in California Labor Code sections 1019 and 244(b).

1                  4. California Civil Code section 1542. To effect a full and complete general  
2 release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of  
3 California Civil Code section 1542 for the Released Claims, and does so understanding and  
4 acknowledging the significance and consequence of specifically waiving rights under Civil Code  
5 section 1542, which states as follows:

6                  A general release does not extend to claims which the creditor does not  
7 know or suspect to exist in his or her favor at the time of executing the  
8 release, which if known by him or her must have materially affected  
his or her settlement with the debtor.

9                  Thus, notwithstanding the provisions of Civil Code section 1542, and to implement a full and  
10 complete release and discharge, Plaintiff expressly acknowledges this Settlement is intended to  
11 include in its effect, without limitation, all known and unknown claims, including any claims that  
12 he does not know or suspect to exist in his favor against the Released Parties at the time of signing  
13 this Settlement, and that this Settlement contemplates the extinguishment of any such claim or  
14 claims. Plaintiff acknowledges he may later discover facts different from or in addition to those he  
15 now knows or believes to be true regarding the matters released or described in this Settlement, and  
16 nonetheless agrees that the releases and agreements contained in this Settlement shall remain fully  
17 effective in all respects notwithstanding any later discovery of any different or additional facts.  
18 Plaintiff assumes any and all risks of any mistake in connection with the true facts involved in the  
19 matters, disputes, or controversies described in this Settlement or with regard to any facts now  
20 unknown to Plaintiff relating to those matters.

21 **F. JUDICIAL APPROVALS**

22                  1. Duties of Parties Prior to Preliminary Approval. Counsel for the Parties shall  
23 jointly request a hearing before the Court to seek preliminary approval of the Settlement on the  
24 earliest practical date following execution of this Settlement. In conjunction with such hearing, the  
25 Parties will provide the Court with this Settlement Agreement, and any other documents necessary to  
26 implement the Settlement. Simultaneously with the filing of this Settlement Agreement, and solely  
27 for purposes of this Settlement, Counsel for the Parties will request that the Court enter a  
28 Preliminary Approval Order for the purpose of:

- (a) Preliminarily approving the proposed Settlement, adjudging the terms to be fair, reasonable and adequate;
- (b) Provisionally certifying the Class and approving the Class and Release Periods for settlement purposes only;
- (c) Approving Legal Aid at Work to serve as Class Counsel;
- (d) Approving Plaintiff Jose Martinez to serve as Class Representative;
- (e) Ordering Notice of the Settlement and related matters to be disseminated to Class Members as specified herein or as may otherwise be ordered by the Court, provided that such order is also acceptable to the Parties and consistent with the terms of this Settlement; and
- (e) Scheduling a Final Approval Hearing.

2. Duties of Parties Following Preliminary Approval. Following preliminary approval, notice to the Class and an opportunity for objection, a Final Approval Hearing shall be held on a date set by the Court. In connection with the Final Approval Hearing, the Parties shall file such papers with the Court as either their counsel or the Court may determine to be necessary. Class Counsel shall file proof of notice to the Class before the Final Approval Hearing and will submit a proposed Final Approval Order and Judgment for review by the Court for the purpose of:

- (a) Approving the Settlement, adjudging the terms to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for Attorneys' Fees and Litigation Costs, the Service Award, the PAGA Payment, and Administration Costs as set forth herein; and
- (c) Entering a Final Approval Order and Judgment as final disposition of the Action in its entirety, intended to be immediately appealable. Upon entry of the Final Approval Order and Judgment, each and every Class Member shall be deemed to have conclusively released and forever discharged the Released Parties for any and all Released Claims, and shall be permanently barred and enjoined from the institution or prosecution of any and all Released Claims against the Released Parties, except as to such rights or claims as may be created by the Settlement. It is expressly agreed by the Parties that the Court will retain jurisdiction over the Action only: (i) to enforce the terms of this Settlement; (ii) address any settlement administration matters that may

1 arise; and (iii) address such post-Judgment matters as may be appropriate under the Court's rules or  
2 applicable law.

3           3.     **Voiding Settlement.** Defendants have the option of voiding this Settlement  
4 within thirty (30) calendar days of receiving notice that the number of Class Members timely  
5 completing valid requests for exclusion from the settlement (opt out) is five percent (10%) or more  
6 of all Class Members. In addition, Plaintiff has the option of voiding this Settlement within thirty  
7 (30) calendar days of receiving notice that the total hours worked by Class Members during the  
8 Class Period is ten percent (15%) or more than the amount of hours upon which settlement was  
9 reached. Each Party may exercise its option to void this Settlement by giving notice, in writing, to  
10 the other side and to the Court.

11           4.     If the Court does not grant final approval of this Settlement Agreement, or if  
12 the Court's final approval of the Settlement Agreement is reversed or materially modified on  
13 appellate review, then this Settlement Agreement shall be null and void *ab initio*, no Party shall be  
14 bound by the terms thereof, and this Settlement Agreement shall not be admissible or offered into  
15 evidence in the litigation or any other action for any purpose whatsoever, and any order or judgment  
16 entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by  
17 stipulation of the Parties. In such case, the Parties shall be returned to their respective positions as of  
18 the date immediately prior to the execution of this Settlement Agreement, and the Parties shall  
19 proceed in all respects as if this Settlement Agreement had not been executed, and Defendants shall  
20 have no obligation to make any payments to Plaintiff, Class Counsel, the LWDA, the Settlement  
21 Administrator or any Class Member. Notwithstanding the foregoing, an appeal of, a modification of,  
22 a reversal on appeal, or the reduction of any Attorneys' Fees, Litigation Costs, Service Award, or  
23 PAGA Payment shall not constitute grounds for cancellation and termination of this Settlement.

24           **G.     MISCELLANEOUS PROVISIONS**

25           1.     **Voluntary Nature.** The Parties acknowledge they have entered into this  
26 Settlement voluntarily, on the basis of their own judgment and without coercion, duress, or undue  
27 influence of any Party, and not in reliance on any promises, representations, or statements made by  
28 the other Parties other than those contained in this Settlement Agreement. Each of the Parties hereto

1 expressly waives any right he/they might ever have to claim that this Settlement was in any way  
2 induced by fraud.

3                   2.     Informed Consent. Prior to execution of this Settlement Agreement, each  
4 Party has read this entire Settlement and been given the opportunity to, and have, consulted with  
5 independent counsel of their choosing and to have such independent counsel advise as to the  
6 meaning of this Settlement and its legal effect.

7                   3.     Authority. The signatories hereby represent that they are fully authorized to  
8 enter into this Settlement Agreement and to bind the Parties hereto to the terms and conditions  
9 hereof.

10                  4.     Cooperation. The Parties agree to fully cooperate with each other to  
11 accomplish the terms of this Settlement Agreement, including but not limited to, execution of such  
12 documents and to take such other action as may reasonably be necessary to implement the terms of  
13 this Settlement. The Parties shall use their reasonable best efforts, including all efforts contemplated  
14 by this Settlement Agreement and any other efforts that may become necessary by order of the  
15 Court, or otherwise, to effectuate the Settlement and the terms set forth herein.

16                  5.     Publicity. Class Counsel and Plaintiff shall not issue any public comment,  
17 communicate with the media, or engage in any form of advertising or public announcement  
18 (including social media) regarding the Action or this Settlement at any time, except that Class  
19 Counsel is explicitly permitted to establish a settlement website, in accordance with and as required  
20 by the Court's Procedural Guidelines for Preliminary Approval of Class Action Settlements.  
21 However, Class Counsel and Plaintiff may discuss the settlement with the media if the media  
22 independently contacts it or him, respectively. Moreover, Class Counsel shall be able to  
23 communicate the fact of the settlement and its terms internally, to its board of directors,  
24 accountants/auditors, taxing authorities, and as otherwise required by law.

25                  6.     Construction. The Parties agree that the Settlement is the result of lengthy,  
26 intensive arms-length negotiations between the Parties and that this Settlement Agreement shall not  
27 be construed in favor of or against any Party by reason of the extent to which that Party has  
28 participated in the drafting of this Settlement Agreement.

1                   7.     Captions and Interpretations. Paragraph titles or captions contained herein  
2 appear as a matter of convenience and for reference, and in no way define the scope of this  
3 Settlement or any provision hereof.

4                   8.     Modifications. This Settlement Agreement may not be changed, altered, or  
5 modified, except in writing and signed by the Parties hereto as approved by the Court. This  
6 Settlement Agreement may not be discharged except by performance in accordance with its terms or  
7 by a writing signed by the Parties hereto as approved by the Court.

8                   9.     Waiver. No waiver of any of the terms of this Settlement Agreement shall be  
9 valid unless in writing and signed by the Party to the Settlement against whom such waiver is sought  
10 to be enforced. The waiver by any Party to any provision of this Settlement Agreement shall not  
11 operate or be construed as a waiver of any subsequent breach by any Party, nor shall any waiver  
12 operate or be construed as a rescission of this Settlement.

13                  10.    Integration. This Settlement Agreement and its Exhibit constitute the entire  
14 Settlement of the Parties with respect to the matters discussed herein, and no oral or written  
15 representations, warranties, or inducements have been made to any Party concerning this Settlement  
16 Agreement and/or its Exhibits other than the representations, warranties, and covenants contained  
17 and memorialized in such documents. All prior or contemporaneous negotiations, agreements,  
18 understandings, and representations, whether written or oral, are expressly superseded hereby and  
19 are of no further force and effect. Each of the Parties acknowledges that it has not relied on any  
20 promise, representation, or warranty, express or implied, not contained in this Settlement  
21 Agreement.

22                  11.    No Prior Assignments. This Settlement Agreement shall be binding upon and  
23 inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators  
24 and successors. The Parties hereto represent, covenant, and warrant they have not directly or  
25 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any  
26 person or entity any portion of any liability, claim, demand, action, cause of action or rights herein  
27 released and discharged except as set forth herein.

28                  12.    Governing Law. This Settlement is made and entered into under the laws of

1 the State of California, and shall be interpreted, applied and enforced under those laws, and any  
2 litigation concerning this Settlement shall be in the Superior Court of California, County of  
3 Alameda.

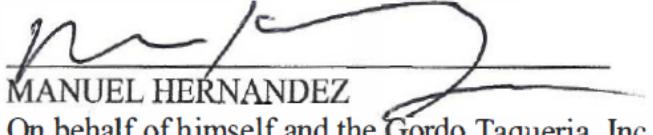
4           13. Execution. This Settlement Agreement may be executed in one or more  
5 counterparts, each of which shall be an original, provided that counsel for the Parties shall exchange  
6 among themselves original signed counterparts.

7           14. Signatories. The Parties agree that, because the Class Members are numerous,  
8 it is impossible or impractical to have each Class Member execute this Settlement Agreement.  
9 Therefore, the Notice Packet will inform all Class Members of the binding nature of the releases  
10 contained in this Settlement Agreement, which shall have the same force and effect as if this  
11 Settlement were executed by each Class Member.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2 IN WITNESS WHEREOF: the undersigned have duly executed this Settlement as of  
3 the date set forth below:  
4

5 DATED: Sept. 19, 2018

  
MANUEL HERNANDEZ  
On behalf of himself and the Gordo Taqueria, Inc.  
Defendants

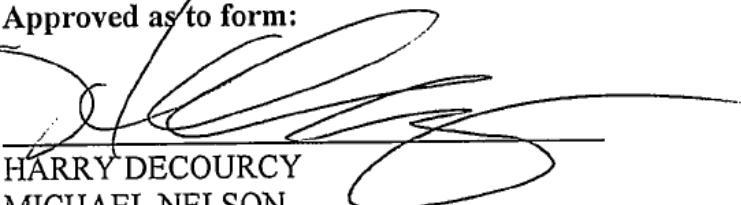
9 DATED: September 19, 2018

  
DICK YAMAGAMI  
On behalf of himself and the Gordo Taqueria, Inc.  
Defendants

14 DATED: September 21, 2018

  
JOSE MARTINEZ  
Plaintiff

18 DATED: Sept. 24, 2018

  
Approved as to form:  
HARRY DECOURCY  
MICHAEL NELSON  
LITTLER MENDELSON, P.C.  
Attorneys for Defendants

23 DATED: September 21, 2018

  
CAROLE VIGNE  
MANA BARARI  
LEGAL AID AT WORK  
Attorneys for Plaintiff and the Settlement Class

# EXHIBIT A

# NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

## **IMPORTANT LEGAL NOTICE**

*Jose Martinez v. Gordo Taqueria #1, Inc., et al.*

Superior Court for the County of Alameda, Case No. RG16842777

## **THIS NOTICE CONTAINS IMPORTANT INFORMATION THAT MAY AFFECT YOU**

### **YOU ARE NOT BEING SUED**

TO: ALL PERSONS CURRENTLY OR FORMERLY EMPLOYED BY GORDO TAQUERIA IN CALIFORNIA AS NON-EXEMPT HOURLY EMPLOYEES, INCLUDING PREP COOKS, LINE COOKS, BURRITO-MAKERS, DISHWASHERS, AND MANAGERS, AT ANY TIME FROM DECEMBER 16, 2012 TO SEPTEMBER 24, 2017 (“CLASS MEMBERS” or the “CLASS”).

#### **1. Why Did I Receive This Notice?**

A proposed settlement has been reached in a lawsuit that may affect your rights.

This lawsuit is against Gordo Taqueria #1, Inc. (2252 Clement Street, San Francisco), Gordo Taqueria #2, Inc. (1239 9<sup>th</sup> Avenue, San Francisco), Gordo Taqueria #3, Inc. (1423 Solano Avenue, Albany), Gordo Taqueria #5, Inc. (2989 College Avenue, Berkeley), Gordo Taqueria #6, Inc. (5450 Geary Boulevard, San Francisco), Gordo Taqueria #7 (2404 Telegraph Avenue, Berkeley), Dick Yamagami and Manuel Hernandez (collectively “Gordo Taqueria”). Jose Martinez (“Plaintiff”) was formerly employed by Gordo Taqueria as a dishwasher and prep cook. He brought this class action lawsuit on behalf of himself and the Class Members against Gordo Taqueria.

**You are receiving this notice because according to Gordo Taqueria’s records, you worked for one or more of the six Gordo Taqueria locations in the Bay Area at some time between December 16, 2012 and September 24, 2017 (“Class Period”).** This means you are a potential Class Member, and you have a right to know about the proposed settlement. This notice explains the lawsuit, the proposed settlement, your legal rights, what payments may be available, and how to receive them.

#### **2. What Is the Lawsuit About?**

Plaintiff filed a proposed class action lawsuit on behalf of himself and the Class. Plaintiff claims that Gordo Taqueria violated the law by:

- (1) Failing to distribute all earned tips to employees for up to a year, and also using tips to pay for business expenses;
- (2) Failing to pay overtime and/or double-time premium rates;
- (3) Scheduling Plaintiff and Class Members at different locations in order to avoid the payment of overtime and/or double-time hours;
- (4) Failing to provide a second off-duty, uninterrupted meal period on days in which Plaintiff and Class Members worked more than ten hours;

- (5) Failing to authorize and permit rest periods;
- (6) Failing to provide paid sick leave or inform employees of their right to paid sick leave;
- (7) Failing to compensate for all earned wages due either upon termination or within 72 hours of quitting without notice;
- (8) Failing to provide accurate wages statements including all legally required information; and
- (9) Failing to keep basic required payroll and time records.

Plaintiff sought unpaid wages and gratuities, interest, and penalties, as well as attorneys' fees and costs for himself and Class Members.

Gordo Taqueria denies Plaintiffs' allegations. **The Court has not made any decision about the claims in this lawsuit.** By issuing this Notice, the Court is not suggesting either side would win or lose if this case went to trial.

### ***3. What Is a Class Action?***

A class action is a legal proceeding where one or more persons sue not just for themselves, but for other people who have similar claims (forming a "class" or a group of people).

### ***4. Background of Settlement***

Plaintiff's lawyers ("Class Counsel") have conducted extensive investigation and discovery and reached a settlement with Gordo Taqueria after extensive negotiations with the assistance of a neutral mediator.

Plaintiff and the attorneys for both sides believe the settlement is fair, reasonable, and adequate, and in the best interests of the Class Members considering the uncertain outcome, risks, costs, and time involved in further litigation, trial, and possible appeals.

### ***5. What Are the Terms of the Proposed Settlement?***

Gordo Taqueria has agreed to pay \$690,000.00 ("Settlement Fund") to settle this case. This money is used to pay the Settlement Administrator to finalize the settlement, the California Labor and Workforce and Development Agency, the Plaintiff for his service to the Class ("Class Representative Service Award"), and Class Counsel's fees and costs. The remainder of the Settlement Fund after paying these costs and expenses is the Net Settlement Fund that will be distributed to Class Members.

### ***6. How Much Will My Settlement Payment Be?***

Your payment will be distributed from the Net Settlement Fund. The Net Settlement amount will be distributed on a pro rata basis to each of the Settlement Class Members, based on the formula created by both parties. Your payment will be calculated based upon your last hourly rate during the Class Period, the number of hours worked during the Class Period, number of hours worked during the period in which Plaintiff alleges that all hours worked were paid at the regular pay rate ("Regular Pay Period"), and whether you separated your employment with Gordo Taqueria during the Class Period.

If you disagree with your estimated Settlement Payment, you may challenge the information used to calculate your Settlement Payment and provide evidence establishing that you should be owed a different Settlement Payment using the challenge procedure provided in the Settlement Share Form. The Settlement Administrator will evaluate the evidence you submit and resolve the dispute.

## **7. When Will I Receive My Payment and What Do I Have To Do?**

Class Members who do not opt out will receive payments within 30 days after final court approval of the Settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the Settlement.

You must cash your check within 90 days of when the check is issued. The check will be void after 90 days, and the Settlement provides that money will be redistributed to other Class Members in certain circumstances.

You do not pay any out-of-pocket costs for participating in the Settlement.

## **8. What Are My Legal Rights and Options Under the Settlement?**

<b>Do Nothing</b>	If you do nothing, you will receive a payment under the Settlement if the Court grants final approval of the Settlement. You will release all claims covered by the Settlement. You do not have to do anything to receive a payment.
<b>Exclude Yourself or "Opt Out"</b>	If you "opt out," you will NOT receive any money and you will not release your claims against Gordo Taqueria. To request to be excluded from the Settlement, you <u>must</u> mail a written, signed request to be excluded from the Settlement to the Settlement Administrator, at the address below, on or before [REDACTED], 2019. Any request for exclusion not postmarked on or before [REDACTED], 2019 will be void unless the Court agrees to review the late exclusion.
<b>Object to the Settlement</b>	Any Class Member may object to the Settlement. If you wish to object, you must do so in writing and must state the basis for your objection(s). To object, you <u>must</u> prepare an objection, <u>sign it</u> , and submit it to the Settlement Administrator at the address below. Any objection not filed or postmarked on or before [REDACTED], 2019 will be void unless the Court agrees to review the late objection.

## **9. What if I Have Questions?**

If you have questions, please contact Class Counsel or the Settlement Administrator.

Class Counsel:

### **LEGAL AID AT WORK**

Carole Vigne  
Katherine Fiester  
180 Montgomery Street, Suite 600  
San Francisco, CA 94104  
(415) 864-8848

[insert settlement administrator contact information]

DO NOT CONTACT THE COURT OR THE ATTORNEYS FOR GORDO TAQUERIA FOR INFORMATION REGARDING THE SETTLEMENT OR THE CLAIM PROCESS.

## ***10. Who Is the Settlement Administrator?***

The Settlement Administrator is a company hired by the Parties to administer the Settlement. The parties have agreed to use Dahl Administration, LLC as the Settlement Administrator.

The Settlement Administrator's duties include calculating settlement payments, processing challenges, objections and exclusions, making payments to the Class Members, and answering any questions you may have. The costs of administering the Settlement, which are estimated to be no more than \$12,000.00, will be deducted from the Settlement.

## ***11. How Will the Lawyers and the Representative for the Class Be Paid?***

Class Counsel will request Court approval for reimbursement of actual litigation costs up to \$10,000, and payment of attorneys' fees of up to no more than 25% of the total Settlement Fund, after the litigation costs have been deducted. The Court decides whether or not to award the attorneys' fees and costs requested. The attorneys' fees are for legal services provided, and to be provided, to the Class.

Class Counsel will also ask the Court to approve a Class Representative Service Award of \$10,000 to the named Plaintiff, Jose Martinez, for his time and willingness to accept the risks of bringing this case. This award would be in addition to the amount he is owed under the settlement as a Class Member.

## ***12. Notice of Hearing on Final Approval and Objections to Class Action Settlement.***

A Final Fairness Hearing will be held before the Honorable Brad Seligman on [REDACTED], 201[REDACTED], at [REDACTED] am/pm in Department 23 of the Alameda County Superior Court, located at 1221 Oak Street, 4th Floor, Oakland, California 94612, to determine whether the proposed Settlement is fair, reasonable, and adequate. The hearing may be continued without further notice.

You do not need to appear at this hearing unless you wish to object to the Settlement. If you have sent a written objection, you may appear at the hearing if you choose to do so.

## ***13. What Is Being Released as Part of the Settlement?***

If the Court grants Final Approval to the settlement, the Class Members who have not opted out will fully release Gordo Taqueria from liability for any claims that were asserted or could be asserted based on the facts alleged in the Second Amended Complaint in the Class Action. Released claims include all claims under California law related to failure to pay all owed gratuities and in a timely manner, failure to pay overtime and double-time wages for overtime and double-time hours worked, failure to provide meal periods, failure to authorize and permit rest periods, failure to provide paid sick leave, failure to provide accurate wage statements, failure to keep accurate payroll records, and waiting time penalties.

All of the released claims just mentioned expressly include any and all penalties established by the Private Attorneys General Act for any of the claims just described. In addition to releasing the claims just mentioned against Gordo Taqueria, Class Members who do not opt out will also release claims against Gordo Taqueria's former and current parents ("parent" is a legal term referring to a relationship between two companies), subsidiaries, affiliated corporations, officers, directors, employees, partners, shareholders and agents; and any other successors, assigns, or legal representatives.

#### **14. Can I Be Retaliated Against for Participating in the Settlement?**

The law prohibits Gordo Taqueria from retaliating against employees for exercising their rights under the law. Therefore, Gordo Taqueria cannot fire you, demote you, harass you, classify you as ineligible for rehire, or retaliate against you in any other way because you choose to participate in the Settlement.

#### **15. Getting More Information about the Settlement**

This Notice contains a summary of the basic terms of the settlement. For the precise terms, you may review the Settlement Agreement.

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online on the Alameda County Superior Court's website, known as DomainWeb, at <https://publicrecords.alameda.courts.ca.gov/PRS/>. After arriving at the website, click the "Search By Case Number" link, then enter RG16842777 as the case number and click "SEARCH." Images of every document filed in the case may be viewed through the "Register of Actions" at a minimal charge.

You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. You may also contact the Settlement Administrator by phone at \_\_\_\_\_ and Class Counsel at the number listed above.

The Settlement Agreement, this Class Notice, and other important documents related to this case and Settlement, are also available at: [www.gordotaqueriaclassaction.com]

#### **IMPORTANT:**

- 1. If you move or change your address, send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.**
- 2. It is strongly recommended that you keep a copy of any challenge, request for exclusion and/or objection that you submit, and proof of timely mailing and/or faxing, until after the Final Approval hearing.**

## **ESTIMATED SETTLEMENT SHARE FORM**

*Jose Martinez v. Gordo Taqueria #1, Inc., et al.*

Your estimated share of the settlement in this case is \$[Estimated Award]. This estimate is based on the information in Paragraph 6 of the Notice of Class Action Settlement that accompanied this form.

If you accept the information used to calculate your estimated share, as set forth below, you do not need to do anything to receive your money. If you believe that any of the information below is inaccurate, you should complete this form and return it to the Settlement Administrator.

MAIL OR FAX ANY CHALLENGES OR ADDRESS UPDATES TO:

[insert settlement administrator information]

**Important:**

1. It is strongly recommended that you keep proof of timely mailing and/or faxing for your records until receipt of your settlement payment.
2. If you change your mailing address, please send your new mailing address to the Settlement Administrator. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

**Your Hourly Rate, Total Number of Work Hours, And Estimated Settlement Share.**

Gordo Taqueria's records show that during the Class Period of December 16, 2012 to September 24, 2017, you were employed by Gordo Taqueria as an hourly employee during the following time period(s):

**<<Dates>>**

Your total number of hours worked during the Class Period above is: **<<number of hours worked>>**.

Your total number of hours worked during the portion of the Class Period that Plaintiff alleges that all hours worked were paid at the regular pay rate (December 16, 2012 to February 18, 2015, referred to as the "Regular Pay Period") is: **<<number of hours worked during the Regular Pay Period>>**.

Your last hourly rate during the Class Period above was: \$ **<<rate of pay>>**

Based on your dates of employment, you **<<did/did not>>** end your employment with Gordo Taqueria during the Class Period.

Based on the total number of hours worked during the Class Period, total number of hours worked during the Regular Pay Period, last hourly rate, and whether you ended your employment with Gordo Taqueria during the Class Period, your settlement share is currently estimated at \$[Estimated Award], assuming that all Class Members identified to date participate in the Settlement (i.e., can be located and do not opt out). This amount is only an estimate and is subject to change, either up or down, depending upon the number of Class Members who submit challenges to estimated amounts, the outcome of those challenges, the number of Class Members who opt out, and other possible factors.

#### ***Challenge Procedure.***

Check the boxes below ONLY if you wish to challenge your personal information, as listed above. You do NOT have to submit this form if this information is accurate. All fields must be complete for your challenge to be accepted. **Any challenges must be post-marked by no later than [DATE].** Challenges post-marked after this date will not be honored.

- I wish to challenge the **total number of hours worked during the Class Period** listed above.
- I wish to challenge the **total number of hours worked from December 16, 2012 to February \_\_, 2015** listed above.
- I wish to challenge my last **hourly rate during the Class Period** listed above.
- I wish to challenge whether I **ended my employment with Gordo Taqueria during the Class Period** as listed above.

I have included with a written statement of what I believe to be my correct information regarding the challenge(s) checked above. I have also included information and/or documentary evidence that support my challenge (paystubs, time records, etc). I understand that, by submitting this challenge, I authorize the Settlement Administrator to review Gordo Taqueria's records and make a decision regarding my challenge.

If you have checked any of the boxes above, please sign below, print your name, and provide your ID number.

---

Signature

Name of Class Member \_\_\_\_ [NAME] \_\_\_\_\_

Class Member ID Number (from address label): \_\_\_\_ [mail id] \_\_\_\_\_

Statement of reasons and documentation in support of challenge(s) checked above:

[Please attach documentation and use separate page(s) as necessary]

## ***Your Contact Information.***

The Settlement Administrator is using the following contact information for you. If any of your contact information is inaccurate, please correct that information and return a copy of this form to the Settlement Administrator at the address above.

1. <<Name>>

<<Address>>

[[City]], [[State]] [[Zip]]

(\_\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_  
**Home Telephone Number**

(\_\_\_\_\_) \_\_\_\_ -- \_\_\_\_  
**Cellular Phone Number**